



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2020-0410; EPA-R05-OAR-2021-0141; FRL-9484-01-R5]

Air Plan Approval; Wisconsin; Redesignation of the Manitowoc, Wisconsin Area to Attainment of the 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Manitowoc, Wisconsin area is attaining the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard) and to act in accordance with a request from the Wisconsin Department of Natural Resources (WDNR) to redesignate the area to attainment for the 2015 ozone NAAQS, because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). Also, EPA is proposing to approve WDNR's certification that its stationary annual emissions statement regulation, which has been previously approved by EPA under a prior ozone standard, satisfies the CAA emission statement rule requirement for the 2015 ozone standard. WDNR submitted these requests on August 3, 2020 and October 29, 2021. EPA is also proposing to approve, as a revision to the Wisconsin State Implementation Plan (SIP), the State's plan for maintaining the 2015 ozone NAAQS through 2033 in the Manitowoc area. EPA also finds adequate and is proposing to approve Wisconsin's 2025 and 2033 volatile organic compound (VOC) and oxides of nitrogen (NO_x)

Motor Vehicle Emission Budgets (MVEBs) for the Manitowoc area. Finally, these revisions satisfy the emissions inventory requirements for the partial Manitowoc area under the 2015 ozone NAAQS. The CAA requires emission inventories for all areas that were designated nonattainment.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2020-0410 and EPA-R05-OAR-2021-0141 at <https://www.regulations.gov> or via email to blakley.pamela@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA

public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is EPA proposing?
- II. What is the background for these actions?
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 - A. Has the Manitowoc area attained the 2015 ozone NAAQS?
 - B. Has WDNR met all applicable requirements of section 110 and part D of the CAA for the Manitowoc area, and does Wisconsin have a fully approved SIP for the area under section 110(k) of the CAA?
 - C. Are the air quality improvements in the Manitowoc area due to permanent and enforceable emission reductions?
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 - V. Has the state adopted approvable motor vehicle emission

budgets?

- A. Motor Vehicle Emission Budgets
- B. What is the status of EPA's adequacy determination for the proposed VOC and NOX MVEBs for the Manitowoc area?

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- A. Emissions Statement.
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VII. Proposed actions.

VIII. Statutory and executive order reviews.

I. What is EPA proposing?

EPA is proposing to take several related actions. EPA is proposing to determine that the Manitowoc nonattainment area is attaining the 2015 ozone NAAQS, based on quality-assured and certified monitoring data for 2018-2020, and that this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Manitowoc area from nonattainment to attainment for the 2015 ozone NAAQS. EPA is also proposing to approve, as a revision to the Wisconsin SIP, the State's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the area. The maintenance plan is designed to keep the Manitowoc area in attainment of the 2015 ozone NAAQS through 2033. EPA also finds adequate and is proposing to approve the newly-established 2025 and 2033 MVEBs for the Manitowoc area. Finally, EPA is

proposing to approve WDNR's stationary annual emissions statement regulation and base year emissions inventory for the Manitowoc area.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On October 1, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.070 ppm, when truncated after the thousandth decimal place, at all ozone monitoring sites in the area. See 40 CFR 50.19 and appendix U to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality assured ozone monitoring data. The Manitowoc area was originally designated as a marginal nonattainment area for the 2015 ozone NAAQS on June 4, 2018 (83 FR 25776) (effective August 3, 2018). On June 14, 2021, EPA published a final rule revising the 2015 ozone NAAQS designations for 13 counties, including Manitowoc County (86 FR 31438). EPA's revised designations expanded the nonattainment area in Manitowoc County to include a larger part of the county's shoreline area. WDNR's October 29, 2021 submittal

included revised emissions inventories and a redesignation request for the expanded geographic boundaries of the Manitowoc County nonattainment area that reflects the changes EPA made to the area in June 2021.

III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) the Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the "Calcagni Memorandum");
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. "Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,"

- Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
 9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
 10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What is EPA's analysis of WDNR's redesignation request?

A. Has the Manitowoc area attained the 2015 ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2015 ozone NAAQS if it meets the 2015 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix U of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations

(ozone design values) at each monitor must not exceed 0.070 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90% of the days within the ozone monitoring seasons¹, on average, for the 3-year period, with a minimum data completeness of 75% during the ozone monitoring season of any year during the 3-year period. See section 4 of appendix U to 40 CFR part 50.

EPA has reviewed the available ozone monitoring data from monitoring sites in the Manitowoc area for the 2018-2020 period submitted with this request, in addition to the more recent 2019-2021 period. These data have been quality-assured, are recorded in the AQS, and have been certified. These data demonstrate that the Manitowoc area is attaining the 2015 ozone NAAQS. The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for each monitoring site are summarized in Table 1.

Table 1. Annual fourth high daily maximum 8-hour ozone concentrations and 3-year average of the fourth high daily maximum 8-hour ozone concentrations for the Manitowoc area.

County	Monitor	Year	% Observed	Fourth high (ppm)	2018-2020 average (ppm)	2019-2021 average (ppm)
Manitowoc	55-071-0007	2018	99	0.076	0.070	0.068
		2019	99	0.066		

¹ The ozone season is defined by the state in 40 CFR 58 appendix D. The ozone season for Wisconsin is March-October 15. See 80 FR 65292, 65466-67 (October 26, 2015).

		2020	92	0.069		
		2021	99	0.070		

The Manitowoc area's 3-year ozone design value for 2018-2020 is 0.070 ppm² and 0.068 for the 2019-2021 period, both which meet the 2015 ozone NAAQS. Therefore, in this action, EPA proposes to determine that the Manitowoc area is attaining the 2015 ozone NAAQS.

If the design value of a monitoring site in the area violates the NAAQS after proposal but prior to final approval of the redesignation, EPA will not take final action to determine that the Manitowoc area is attaining the NAAQS or to approve the redesignation of this area. As discussed in section IV.D.3. below, WDNR has committed to continue monitoring ozone in this area to verify maintenance of the 2015 ozone NAAQS.

B. Has WDNR met all applicable requirements of section 110 and part D of the CAA for the Manitowoc area, and does Wisconsin have a fully approved SIP for the area under section 110(k) of the CAA?

As criteria for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that a state has met all applicable requirements under section 110 and part D of title I of the CAA (see section 107(d)(3)(E)(v) of the CAA) and that a state has a fully approved SIP under section 110(k) of the CAA (see section 107(d)(3)(E)(ii) of the CAA). EPA finds that WDNR has met all applicable SIP requirements, for

² The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

purposes of redesignation, under section 110 and part D of title I of the CAA (requirements specific to nonattainment areas for the 2015 ozone NAAQS). Additionally, EPA finds that all applicable requirements of the Wisconsin SIP for the area have been fully approved under section 110(k) of the CAA. In making these determinations, EPA ascertained which CAA requirements are applicable to the Manitowoc area and the Wisconsin SIP and, if applicable, whether the required Wisconsin SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992 Calcagni memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465-66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due after the state's submittal of a complete request remain applicable until a redesignation to attainment is approved but are not required as a prerequisite to redesignation. See section 175A(c) of the

CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

1. WDNR has met all applicable requirements of section 110 and part D of the CAA applicable to the Manitowoc area for purposes of redesignation.

a. Section 110 General Requirements for Implementation Plans.

Section 110(a)(2) of the CAA delineates the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by a state after reasonable public notice and hearing, and that, among other things, it must: (1) include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, e.g., NO_x SIP call.³ However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with an area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for an area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. See 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426-27 (May 13, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. An area will still be subject to these requirements after such area is redesignated to attainment of the 2015 ozone NAAQS. The section

³ On October 27, 1992 (63 FR 57356), EPA issued a NO_x SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_x in order to reduce the transport of ozone and ozone precursors.

110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174-53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). See also the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Wisconsin's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation.⁴

b. Part D Requirements.

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart

⁴ On September 14, 2018, WDNR submitted an infrastructure SIP to meet the requirements of section 110 for the 2015 ozone NAAQS. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the 2015 ozone NAAQS nonattainment status of the Manitowoc area. Therefore, EPA concludes that these infrastructure requirements are not applicable requirements for purposes of review of the State's 2015 ozone NAAQS redesignation request.

2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The Manitowoc area was classified as marginal under subpart 2 for the 2015 ozone NAAQS. As such, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176. Similarly, the area is subject to the subpart 2 requirements contained in section 182(a) (marginal nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

i. Subpart 1 Section 172 Requirements.

CAA Section 172(b) requires states to submit SIPs meeting the requirements of section 172(c) no later than three years from the date of the nonattainment designation. For the Manitowoc nonattainment area, SIPs required under CAA section 172 were due August 3, 2021. Section 172(c)(3) requires submittal and approval of a comprehensive, accurate and complete inventory of actual emissions for the area. This requirement was superseded by the inventory requirement in Section 182(a)(1), discussed further in Section iii. Section 182(a) Requirements.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area. Section 172(c)(5) requires permits for the construction and operation of new and modified

major stationary sources in the nonattainment area. EPA has previously approved WDNR's NSR program on January 18, 1995 (60 FR 3538). However, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." WDNR has demonstrated that the Manitowoc area will be able to maintain the 2015 ozone NAAQS without part D NSR in effect; therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. See rulemakings for Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834-31837, June 21, 1996). WDNR's PSD program will become effective in the Manitowoc area upon redesignation to attainment. EPA approved WDNR's PSD program on October 6, 2014 (79 FR 60064) and February 7, 2017 (82 FR 9515)

ii. Section 176 Conformity Requirements.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or

funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements⁵ as not applying for purposes of evaluating a redesignation request under section 107(d), because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); see also 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).

iii. Section 182(a) Requirements.

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_x emitted within the

⁵ CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of MVEBs, such as control strategy SIPs and maintenance plans.

boundaries of the ozone nonattainment area within two years of designation. For the Manitowoc area, this submission was due August 3, 2020. WDNR submitted an emissions inventory that meets the requirements of Section 182(a)(1) in this redesignation request.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC reasonably available control technology (RACT) rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Manitowoc area is not subject to the section 182(a)(2) RACT "fix up" requirement for the 2015 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and because WDNR complied with this requirement for the Manitowoc area under the prior 1-hour ozone NAAQS. See 68 FR 18883 (June 16, 2003).

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented or was required to implement a vehicle inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA amendments or already in the SIP at the time of the CAA amendments, whichever is more stringent. For the purposes of the 2015 ozone NAAQS and the consideration of WDNR's redesignation request for this standard, the Manitowoc area is

not subject to the section 182(a)(2)(B) requirement because the Manitowoc area was designated as nonattainment for the 2015 ozone NAAQS after the enactment of the 1990 CAA amendments.

Section 182(a)(2)(C), under the heading "Corrections to the State implementation plans-Permit programs" contains a requirement for states to submit NSR SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within two years after the date of enactment of the 1990 CAA Amendments. For the purposes of the 2015 ozone NAAQS and the consideration of WDNR's redesignation request for this standard, the Manitowoc area is not subject to the section 182(a)(2)(C) requirement because the Manitowoc area was designated as nonattainment for the 2015 ozone NAAQS after the enactment of the 1990 CAA amendments.

Section 182(a)(4) specifies the emission offset ratio for marginal areas but does not establish a SIP submission deadline. EPA's December 6, 2018, implementation rule for the 2015 ozone NAAQS clarifies that nonattainment NSR permit program requirements applicable to the 2015 NAAQS are due three years from the effective date of the nonattainment designation, *i.e.*, August 3, 2021. See 83 FR 62998, 63001. This approach is based on the provision in CAA section 172(b) requiring the submission of plans or plan revisions "no later than 3 years from the date of the nonattainment designation." These offset ratios are incorporated into Wisconsin's Nonattainment NSR permitting program, which EPA approved on January 18, 1995 (60 FR 3538).

While WDNR has not submitted a nonattainment NSR SIP

revision to address the 2015 ozone NAAQS, WDNR currently has a fully-approved part D NSR program in place. In addition, EPA approved WDNR's PSD program on February 7, 2017 (82 FR 9515). As discussed above, WDNR has demonstrated that the Manitowoc area will be able to maintain the 2015 ozone NAAQS without part D NSR in effect; therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the Manitowoc area upon redesignation to attainment.

Section 182(a)(3) requires states to submit periodic emission inventories and a revision to the SIP to require the owners or operators of stationary sources to annually submit emission statements documenting actual VOC and NO_x emissions. As discussed below in section IV.D.4. of this proposed rule, Wisconsin will continue to update its emissions inventory at least once every three years. Regarding stationary source emission statements, this submission was due August 3, 2020.

WDNR's authority under Chapter NR 438 of the Wisconsin Administrative Code (WAC) requires annual NO_x and VOC emission reporting from any facility in the State that emits a pollutant above the thresholds specified in the code. EPA approved Wisconsin's emission reporting program as satisfying the CAA emission statement requirement on December 6, 1993 (58 FR 64155).

Therefore, EPA finds that the Manitowoc area has satisfied

all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Manitowoc area has a fully approved SIP for purposes of redesignation under section 110(k) of the CAA.

At various times, WDNR has adopted and submitted, and EPA has approved, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, EPA has fully approved the Wisconsin SIP for the Manitowoc area under section 110(k) for all requirements applicable for purposes of redesignation under the 2015 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (see the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989-990 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426), plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the Manitowoc area due to permanent and enforceable emission reductions?

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable emission reductions. EPA has determined that WDNR has demonstrated that that the observed ozone air quality improvement in the Manitowoc

area is due to permanent and enforceable reductions in VOC and NO_x emissions resulting from State and Federal measures adopted into the SIP.

In making this demonstration, the State has calculated the change in emissions between 2017 and 2019. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Manitowoc area and upwind areas have implemented in recent years. In addition, WDNR provided an analysis to demonstrate that the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, EPA finds that WDNR has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

1. Permanent and enforceable emission controls implemented.
 - a. Regional NO_x Controls.

Clean Air Interstate Rule (CAIR)/Cross State Air Pollution Rule (CSAPR). CAIR created regional cap-and-trade programs to reduce sulfur dioxide (SO₂) and NO_x emissions in 27 eastern states, including Wisconsin, that contributed to downwind nonattainment and maintenance of the 1997 ozone NAAQS and the 1997 fine particulate matter (PM_{2.5}) NAAQS. See 70 FR 25162 (May 12, 2005). EPA approved WDNR's CAIR regulations into the Wisconsin SIP on October 16, 2007 (72 FR 58542). In 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR, *North Carolina v.*

EPA, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without *vacatur* to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and thus addressed the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR. CSAPR requires substantial reductions of SO₂ and NO_x emissions from electric generating units (EGUs) in 28 states in the Eastern United States.

The D.C. Circuit's initial *vacatur* of CSAPR⁶ was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high Court's ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015). The remanded budgets include the Phase 2 NO_x ozone season emissions budgets for Wisconsin. On September 7, 2016, in response to the remand, EPA finalized an update to CSAPR requiring further reductions in NO_x emissions from EGUs beginning in May 2017. This final rule was projected to result in a 20% reduction in ozone season NO_x emissions from EGUs in the eastern

⁶ *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012).

United States, a reduction of 800,000 tons in 2017 compared to 2015 levels.

The reduction in NO_x emissions from the implementation of CSAPR results in lower concentration of transported ozone entering the Manitowoc area upon implementation of the phase 2 budgets in 2019 and throughout the maintenance period.

b. Federal Emission Control Measures.

Reductions in VOC and NO_x emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. On February 10, 2000 (65 FR 6698), EPA promulgated Tier 2 motor vehicle emission standards and gasoline sulfur control requirements. These emission control requirements result in lower VOC and NO_x emissions from new cars and light duty trucks, including sport utility vehicles. With respect to fuels, this rule required refiners and importers of gasoline to meet lower standards for sulfur in gasoline, which were phased in between 2004 and 2006. By 2006, refiners were required to meet a 30 ppm average sulfur level, with a maximum cap of 80 ppm. This reduction in fuel sulfur content ensures the effectiveness of low emission-control technologies. The Tier 2 tailpipe standards established in this rule were phased in for new vehicles between 2004 and 2009. EPA estimates that, when

fully implemented in 2030, this rule will cut NO_x and VOC emissions from light-duty vehicles and light-duty trucks by approximately 76% and 28%, respectively. NO_x and VOC reductions from medium-duty passenger vehicles included as part of the Tier 2 vehicle program are estimated to be approximately 37,000 and 9,500 tons per year, respectively, when fully implemented. As projected by these estimates and demonstrated in the onroad emission modeling for the Manitowoc area, much of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards. On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduce both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule will be phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for the sum of VOC and NO_x and for particulate matter. The VOC and NO_x tailpipe standards for light-duty vehicles represent approximately an 80% reduction from pre-2017's fleet average and a 70% reduction in per-vehicle particulate matter (PM) standards. Heavy-duty tailpipe standards represent about a 60% reduction in both fleet average VOC and NO_x and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in approximately a 50% reduction from previous

standards and apply to all light-duty and onroad gasoline-powered heavy-duty vehicles. Finally, the rule lowered the sulfur content of gasoline to an annual average of 10 ppm by January 2017. As projected by these estimates and demonstrated in the onroad emission modeling for the Manitowoc area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Heavy-Duty Diesel Engine Rules. In July 2000, EPA issued a rule for onroad heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO_x, VOC and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 parts per million by 2007, leading to additional reductions in combustion NO_x and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. Nationally, EPA estimated that 2015 NO_x and VOC emissions would decrease by 1,260,000 tons and 54,000 tons, respectively. Nationally, EPA estimates that by 2030 NO_x and VOC emissions will decrease by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the onroad emission modeling for the Manitowoc area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are

replaced with newer, compliant model years.

Nonroad Diesel Rule. On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for nonroad diesel engines and sulfur reductions in nonroad diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards were phased in for 2008 through 2015 model years based on engine size. The SO₂ limits for nonroad diesel fuels were phased in from 2007 through 2012. EPA estimates that when fully implemented in 2030, compliance with this rule will cut NO_x emissions from these nonroad diesel engines by approximately 90%. As projected by these estimates and demonstrated in the nonroad emission modeling for the Manitowoc area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Nonroad Spark-Ignition Engines and Recreational Engine Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards were phased in from model year 2004 through 2012. When fully implemented in 2030, EPA estimates an overall 72% reduction in VOC emissions from these engines and an 80% reduction in NO_x emissions. As

projected by these estimates and demonstrated in the nonroad emission modeling for the Manitowoc area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896), EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards applied beginning in 2011, and are expected to result in a 15 to 25% reduction in NO_x emissions from these engines by 2030. Final Tier 3 emission standards apply beginning in 2016 and are expected to result in approximately an 80% reduction in NO_x from these engines by 2030. As projected by these estimates and demonstrated in the nonroad emission modeling for the Manitowoc area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

2. Emission reductions.

WDNR is using a 2017 emissions inventory as the nonattainment year. This is appropriate because it was one of the years used to designate the area as nonattainment. WDNR is using 2019 as the attainment year, which is appropriate because it is one of the years in the 2018-2020 period used to demonstrate attainment.

Area and nonroad mobile emissions were collected from data

available on EPA's Air Emissions Modeling and National Emissions Inventory websites.⁷ Using 2017 National Emissions Inventory (NEI) and Emissions Modeling platform 2016v1, WDNR collected data for the 2017 NEI year, and the 2023 projected inventory. 2017 emissions were assumed to be equivalent to the 2017 NEI emissions. 2019 emissions were derived by interpolating between 2017 and 2023 (2017 NEI and 2016v1).

WDNR compiled 2017 and 2019 actual point source emissions from state inventory databases. Tons per summer day (TPSD) emissions were then derived by using emissions from the third quarter of the calendar year (*i.e.*, July 1 to September 30) to represent the typical ozone season day emissions for these sources and applying a conversion factor to the annual emissions to account for ozone season work weekday emissions being higher if a facility only operates during the work week (*i.e.*, five days) instead of the entire week (*i.e.*, seven days).

Onroad mobile source emissions were calculated from emission factors produced by EPA's Motor Vehicle Emission Simulator model, MOVES 3.0.1, and transportation data developed by the Wisconsin Department of Transportation.

Using the inventories described above, WDNR's submittal documents changes in VOC and NO_x emissions from 2017 to 2019 for the Manitowoc area. Emissions data are shown in Tables 2 through 6.

Table 2. Manitowoc area NO_x emissions for nonattainment year 2017 (TPSD) .

County	Point	Area	Nonroad	Onroad	Total
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⁷ <https://www.epa.gov/air-emissions-modeling/2011-version-63-platform>

Manitowoc	1.83	0.75	1.05	1.76	5.39
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Table 3. Manitowoc area VOC emissions for nonattainment year 2017 (TPSD) .

County	Point	Area	Nonroad	Onroad	Total
Manitowoc	1.33	2.56	0.67	0.68	5.23

Table 4. Manitowoc area NO_x emissions for attainment year 2019 (TPSD) .

County	Point	Area	Nonroad	Onroad	Total
Manitowoc	2.22	0.71	0.98	1.38	5.30

Table 5. Manitowoc area VOC emissions for attainment year 2019 (TPSD) .

County	Point	Area	Nonroad	Onroad	Total
Manitowoc	1.18	2.45	0.61	0.57	4.82

Table 6. Change in NO_x and VOC emissions in the Manitowoc area between 2017 and 2019 (TPSD) .

	NO _x			VOC		
	2017	2019	Net Change (2017-2019)	2017	2019	Net Change (2017-2019)
Point	1.83	2.22	0.39	1.33	1.18	-0.15
Area	0.75	0.71	-0.04	2.56	2.45	-0.11
Nonroad	1.05	0.98	-0.07	0.67	0.61	-0.06
Onroad	1.76	1.38	-0.38	0.68	0.57	-0.11
Total	5.39	5.30	-0.09	5.23	4.82	-0.41

As shown in Table 6, NO_x and VOC emissions in the Manitowoc area declined by 0.09 TPSD and 0.41 TPSD, respectively, between 2017 and 2019.

3. Meteorology.

WDNR analyzed the maximum fourth-high 8-hour ozone values for May, June, July, August, and September, for years 2000 to 2019, to further support WDNR's demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved, is due to permanent and enforceable emission reductions and not unusually favorable

meteorology.

First, the maximum 8-hour ozone concentration at the monitor in the Manitowoc area was compared to the number of days where the maximum temperature was greater than or equal to 80° F. While there is a clear trend in decreasing ozone concentrations at the monitor, there is no such trend in the temperature data.

WDNR also examined the relationship between the average summer temperature for each year of the 2000-2019 period and the fourth-high 8-hour ozone concentration. Given the similarity of ozone concentrations observed at the monitor and the regional nature of ozone formation, WDNR conducted this analysis using the average fourth-high 8-hour ozone concentration from the Manitowoc monitor. While there is some correlation between average summer temperatures and ozone concentrations, this correlation does not exist over the study period. The linear regression lines for each data set demonstrate that the average summer temperatures have increased over the 2000 to 2019 period, while average ozone concentrations have decreased. Because the correlation between temperature and ozone formation is well established, these data suggest that reductions in precursors are responsible for the reductions in ozone concentrations in the Manitowoc area, and not unusually favorable summer temperatures.

As discussed above, WDNR identified numerous Federal rules that resulted in the reduction of VOC and NO_x emissions from 2017

to 2019. In addition, WDNR's analyses of meteorological variables associated with ozone formation demonstrate that the improvement in air quality in the Manitowoc area between the year violations occurred and the year attainment was achieved is not due to unusually favorable meteorology. Therefore, EPA finds that WDNR has shown that the air quality improvements in the Manitowoc area are due to permanent and enforceable emissions reductions.

D. Does WDNR have a fully approvable ozone maintenance plan for the Manitowoc area?

As one of the criteria for redesignation to attainment, section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) an attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the Manitowoc area to attainment for the 2015 ozone NAAQS, WDNR submitted a SIP revision to provide for maintenance of the 2015 ozone NAAQS through 2033, more than 10 years after the expected effective date of the redesignation to attainment. As discussed below, EPA proposes to find that WDNR's ozone maintenance plan includes the necessary components and approve the maintenance plan as a revision of the Wisconsin SIP.

1. Attainment inventory.

EPA is proposing to determine that the Manitowoc area has attained the 2015 ozone NAAQS based on monitoring data for the period of 2018-2020. WDNR selected 2019 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO_x. The attainment emissions inventory identifies the levels of emissions in the Manitowoc area that are sufficient to attain the 2015 ozone NAAQS. The derivation of the attainment year emissions was discussed above in section IV.C.2. of this proposed rule. The attainment level emissions, by source category, are summarized in Tables 4 and 5 above.

2. Has the State documented maintenance of the ozone standard

in the Manitowoc area?

WDNR has demonstrated maintenance of the 2015 ozone NAAQS through 2033 by ensuring that current and future emissions of VOC and NO_x for the Manitowoc area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099-53100 (October 19, 2001), 68 FR 25413, 25430-25432 (May 12, 2003).

WDNR is using emissions inventories for the years 2025 and 2033 to demonstrate maintenance. 2033 is more than 10 years after the expected effective date of the redesignation to attainment and 2025 was selected to demonstrate that emissions are not expected to spike in the interim between the attainment year and the final maintenance year. The emissions inventories were developed as described below.

Point, area, and nonroad mobile emissions were collected from data available on EPA's Air Emissions Modeling website. Using Emissions Modeling platform 2016v1, WDNR collected data for the 2023 and 2028 projected inventories. TPSD emissions were then derived by dividing July emissions by the number of days in July. For interim year 2023, version 2023e1 was used without modification except for adjustments to emissions for ten point sources, based on more recent source specific information. 2030 emissions were derived by linearly extrapolating from 2016 to 2028. As with the 2023 inventory, adjustments were made to

the emissions for ten point sources based on more recent source specific information.

Onroad mobile source emissions were developed through the combined effort of WDNR and Wisconsin Department of Transportation and were calculated from emission factors produced by EPA's MOVES 3.0.1 model and data extracted from the region's travel-demand model. Emissions data are shown in Tables 7 through 11 below.

Table 7. Manitowoc area NO_x emissions for interim maintenance year 2025 (TPSD).

County	Point	Area	Nonroad	Onroad	Total
Manitowoc	2.52	0.63	0.84	0.91	4.90

Table 8. Manitowoc area VOC emissions for interim maintenance year 2025 (TPSD).

County	Point	Area	Nonroad	Onroad	Total
Manitowoc	1.36	2.25	0.53	0.47	4.60

Table 9. Manitowoc area NO_x emissions for maintenance year 2033 (TPSD).

County	Point	Area	Nonroad	Onroad	Total
Manitowoc	2.55	0.61	0.80	0.61	4.56

Table 10. Manitowoc area VOC emissions for maintenance year 2033 (TPSD).

County	Point	Area	Nonroad	Onroad	Total
Manitowoc	1.41	2.35	0.50	0.32	4.58

Table 11. Change in NO_x and VOC emissions in the Manitowoc area between 2019 and 2033 (TPSD).

	NO _x				VOC			
	2019	2025	2033	Net Change (2019- 2033)	2019	2025	2033	Net Change (2019- 2033)
Point	2.22	2.52	2.55	0.33	1.18	1.36	1.41	0.23
Area	0.71	0.63	0.61	-0.10	2.45	2.25	2.35	-0.10
Nonroad	0.98	0.84	0.80	-0.18	0.61	0.53	0.50	-0.11
Onroad	1.38	0.91	0.61	-0.77	0.57	0.47	0.32	-0.25
Total	5.30	4.90	4.56	-0.74	4.82	4.60	4.58	-0.24

In summary, WDNR's maintenance demonstration for the Manitowoc area shows maintenance of the 2015 ozone NAAQS by providing emissions information to support the demonstration that future emissions of NO_x and VOC will remain at or below 2019 emission levels when taking into account both future source growth and implementation of future controls. Table 11 shows NO_x and VOC emissions in the Manitowoc area are projected to decrease by 0.74 TPSD and 0.24 TPSD, respectively, between 2019 and 2033.

3. Continued air quality monitoring.

WDNR has committed to continue to operate the ozone monitors listed in Table 1 above. WDNR has committed to consult with EPA prior to making changes to the existing monitoring network should changes become necessary in the future. WDNR remains obligated to meet monitoring requirements and continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the AQS in accordance with Federal guidelines.

4. Verification of continued attainment.

The State of Wisconsin has confirmed that it has the legal authority to enforce and implement the requirements of the maintenance plan for the Manitowoc area. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. WDNR will continue to operate the current ozone monitors located in the Manitowoc area. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by the EPA.

In addition, to track future levels of emissions, WDNR will continue to develop and submit to EPA updated emission inventories for all source categories at least once every 3 years, consistent with the requirements of 40 CFR part 51, subpart A, and 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements (AERR) on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Wisconsin was compiled for 2017. Point source facilities covered by WDNR's emission statement rule, WAC Chapter NR 438, will continue to submit VOC and NO_x emissions on an annual basis.

5. What is the contingency plan for the Manitowoc area?

Section 175A of the CAA requires that the state must adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The

maintenance plan must identify: the contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, WDNR has adopted a contingency plan for the Manitowoc area to address possible future ozone air quality problems. The contingency plan adopted by WDNR has two levels of response, a warning level response and an action level response.

In WDNR's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.070 ppm or higher is monitored within the maintenance area. A warning level response will consist of WDNR conducting a study to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will consider ease and timing of implementation as well as economic and social impacts.

Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

In WDNR's plan, an action level response is triggered when a three-year design value exceeds 0.070 ppm or greater is monitored within the maintenance area. When an action level response is triggered, WDNR, in conjunction with the metropolitan planning organization or regional council of governments, will determine what additional control measures are needed to assure future attainment of the 2015 ozone NAAQS. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. WDNR may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

WDNR included the following list of potential contingency measures in its maintenance plan:

1. Anti-idling control program for mobile sources, targeting diesel vehicles
2. Diesel exhaust retrofits
3. Traffic flow improvements
4. Park and ride facilities
5. Rideshare/carpool program
6. Expansion of the vehicle emissions testing program

To qualify as a contingency measure, emissions reductions from

that measure must not be factored into the emissions projections used in the maintenance plan.

EPA is proposing to conclude that WDNR's maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, WDNR has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Manitowoc area to cover an additional ten years beyond the initial 10-year maintenance period. Thus, EPA finds that the maintenance plan SIP revision submitted by WDNR for the Manitowoc area meets the requirements of section 175A of the CAA and EPA proposes to approve it as a revision to the Wisconsin SIP.

V. Has the state adopted approvable motor vehicle emission budgets?

A. Motor Vehicle Emission Budgets

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must "conform" to (*i.e.*, be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy,

criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but that have been redesignated to attainment with an approved maintenance plan for the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. See the SIP requirements for the 2015 ozone NAAQS in EPA's December 6, 2018, implementation rule (83 FR 62998). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include MVEBs for criteria pollutants, including ozone, and their precursor pollutants (VOC and NO_x for ozone) to address pollution from onroad transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. See 40 CFR 93.101.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB serves as a ceiling on

emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

B. What is the status of EPA's adequacy determination for the proposed VOC and NO_x MVEBs for the Manitowoc area?

When reviewing submitted control strategy SIPs or maintenance plans containing MVEBs, EPA must affirmatively find that the MVEBs contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission; provision for a public comment period; and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the adequacy process in the Transportation Conformity

Rule Amendments for the “New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,” on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule titled, “Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,” 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, WDNR’s maintenance plan includes NO_x and VOC MVEBs for the Manitowoc area for 2033 and 2025, the last year of the maintenance period and an interim year. The MVEBS were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with maintenance of the 2015 ozone NAAQS.

Table 12. MVEBs for the Manitowoc area (TPSD) .

	Attainment Year 2019 Onroad Emissions	2025 Estimated Onroad Emissions	2025 Mobile Safety Margin Allocation	2025MVEBs	2033 Estimated Onroad Emissions	2033 Mobile Safety Margin Allocation	2033 MVEBs
VOC	0.57	0.41	0.06	0.47	0.28	0.04	0.32
NO _x	1.38	0.79	0.12	0.91	0.53	0.08	0.61

As shown in Table 12, the 2025 and 2033 MVEBs exceed the estimated 2025 and 2033 onroad sector emissions. In an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast, WDNR allocated a portion of the safety margin (described further below) to the mobile sector. WDNR has demonstrated that the Manitowoc area can maintain the 2015 ozone NAAQS with mobile source emissions at or below 0.47

TPSD and 0.32 TPSD of VOC and 0.91 TPSD and 0.61 TPSD of NO_x in 2025 and 2033, respectively, since despite partial allocation of the safety margin, emissions will remain under attainment year emission levels. EPA finds adequate and is proposing to approve the MVEBs for use to determine transportation conformity in the Manitowoc area, because EPA has determined that the area can maintain attainment of the 2015 ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs.

C. What is a safety margin?

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 11, the emissions in the Manitowoc area are projected to have safety margins of 0.74 TPSD for NO_x and 0.24 TPSD for VOC in 2033 (the difference between the attainment year, 2019, emissions and the projected 2033 emissions for all sources in the Manitowoc area). Similarly, there is a safety margin of 0.40 TPSD for NO_x and 0.22 TPSD for VOC in 2025. Even if emissions exceeded projected levels by the full amount of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

As shown in Table 12 above, WDNR is allocating a portion of that safety margin to the mobile source sector. Specifically, in 2025, WDNR is allocating 0.06 TPSD and 0.12 TPSD of the VOC and NO_x safety margins, respectively. In 2033, WDNR is

allocating 0.04 TPSD and 0.08 TPSD of the VOC and NO_x safety margins, respectively. WDNR is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. In fact, the amount allocated to the MVEBs represents only a small portion of the 2025 and 2033 safety margins. Therefore, even though the State is requesting MVEBs that exceed the projected onroad mobile source emissions for 2025 and 2033 contained in the demonstration of maintenance, the permissible level of onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

VI. Emissions Statement and Inventories.

A. Emissions Statement.

Section 182(a)(3)(B) of the CAA requires states to include regulations in the SIP to require sources (source facilities) to submit annual statements characterizing sources of NO_x and VOC emissions within the source facilities and to report actual NO_x and VOC emissions for these sources. WDNR confirmed in its August 3, 2020 submittal that Wisconsin's existing emissions reporting rule at WAC Chapter NR 438, approved in Wisconsin's SIP, remains in place and is adequate to meet the CAA section 182(a)(3)(B) emission statement requirement for the 2015 ozone standard. EPA approved this rule into the Wisconsin SIP on December 6, 1993 (58 FR 64155). This rule specifically requires

all facilities in the state that emit greater than or equal to 5 tons/year of NO_x or 3 tons/year VOC during the reporting year to submit annual emissions statements. Therefore, Wisconsin's rule WAC Chapter NR 438 meets the requirements of CAA section 182(a)(3)(B).

B. Emissions Inventories.

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require states to develop and submit, as SIP revisions, emission inventories for all areas designated as nonattainment for any NAAQS, including the ozone NAAQS. An emission inventory for ozone is an estimation of actual emissions of air pollutants that contribute to the formation of ozone in an area. Ozone is a gas that is formed by the reaction of VOC and NO_x in the atmosphere in the presence of sunlight (VOC and NO_x are referred to as ozone precursors). Therefore, an emission inventory for ozone focuses on the emissions of VOC and NO_x. VOC is emitted by many types of pollution sources, including power plants, industrial sources, on-road and off-road mobile sources, smaller stationary sources, collectively referred to as area sources, and biogenic sources. NO_x is primarily emitted by combustion sources, both stationary and mobile.

Emission inventories provide emissions data for a variety of air quality planning tasks, including establishing baseline emission levels (anthropogenic [manmade] emissions associated with ozone standard violations), calculating emission reduction

targets needed to attain the NAAQS and to achieve reasonable further progress (RFP) toward attainment of the ozone standard (not required in the areas considered here), determining emission inputs for ozone air quality modeling analyses, and tracking emissions over time to determine progress toward achieving air quality and emission reduction goals. As stated above, the CAA requires the states to submit emission inventories for areas designated as nonattainment for ozone. For the 2015 ozone NAAQS, EPA specifies that states submit ozone season day emission estimates for an inventory calendar year to be consistent with the baseline year for RFP plan as required by 40 CFR 51.1310(b). For the RFP baseline year for the 2015 ozone NAAQS under 40 CFR 51.1310(b), states may use a calendar year for the most recently available complete triennial (3-year cycle) emissions inventory (40 CFR 51, subpart A) preceding the year of the area's effective date of designation as a nonattainment area. (83 FR 63034 - 63035, December 6, 2018). States are required to submit estimates of VOC and NO_x emissions for four general classes of anthropogenic sources: stationary point sources; area sources; onroad mobile sources; and nonroad mobile sources.

WDNR provided documentation of a 2017 NO_x and VOC base year emissions inventory requirement for the partial Manitowoc, nonattainment area in their October 29, 2021 submittal. WDNR selected 2017 because this was one of the three years of ozone data indicating a violation of the ozone standard that were used

to designate the areas as nonattainment for the 2015 ozone NAAQS. 83 FR 25778, 25779. In addition, the 2017 emissions inventory was the most recent comprehensive, accurate, and quality assured (QA) triennial emissions inventory in the NEI database, available at the time the state began preparing the emissions inventory submittal for the partial Manitowoc area. Tables 2 and 3 summarize the 2017 NO_x and VOC emissions for partial Manitowoc area in tons of emissions per ozone season day.

EPA has reviewed WDNR's requested SIP revision for consistency with sections 172(c)(3) CAA and 182(a)(1) of the CAA and with EPA's emission inventory requirements. In particular, EPA has reviewed the techniques used by WDNR to derive and quality assure the emission estimates. EPA has also considered whether Wisconsin has provided the public with the opportunity to review and comment on the development of the emission estimates, whether Wisconsin has confirmed that source facility emission statements are required for the 2015 ozone standard, and whether the state has addressed all public comments. WDNR documented the procedures used to estimate the emissions for each of the major source types. The documentation of the emission estimation procedures is thorough and is adequate for EPA to determine that Wisconsin followed acceptable procedures to estimate the emissions. Accordingly, we conclude that Wisconsin has developed inventories of NO_x and VOC emissions that are comprehensive and complete.

VII. Proposed actions.

EPA is proposing to determine that the Manitowoc nonattainment is attaining the 2015 ozone NAAQS, based on quality-assured and certified monitoring data for 2018-2020 showing that the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Manitowoc area from nonattainment to attainment for the 2015 ozone NAAQS. EPA is also proposing to approve, as a revision to the Wisconsin SIP, the State's maintenance plan for the area. The maintenance plan is designed to keep the Manitowoc area in attainment of the 2015 ozone NAAQS through 2033. EPA also finds adequate and is proposing to approve the newly-established 2025 and 2033 MVEBs for the Manitowoc area. EPA also proposes to approve the base year emissions inventories for the partial Manitowoc area under the 2015 ozone NAAQS. Finally, we are also confirming that Wisconsin has acceptable and enforceable annual emission statement regulations for the 2015 ozone standard.

VIII. Statutory and executive order reviews.

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of

requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based

on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone NAAQS in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 25, 2022.

Debra Shore,
Regional Administrator, Region 5.

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